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Oceans and the law of the sea: oceans and the law of the sea

Letter dated 26 December 2017 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit to you herewith a diplomatic note dated 21 December 2017 from the Ministry of Foreign Affairs of the Socialist Republic of Viet Nam addressed to the Ministry of Foreign Affairs of the People's Republic of China (see annex), with reference to the latter's diplomatic note dated 17 October 2017 (see A/72/552, annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda item 77 (a).

(*Signed*) **Nguyen** Phuong Nga
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Viet Nam to the United Nations

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Annex to the letter dated 26 December 2017 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

The Ministry of Foreign Affairs of the Socialist Republic of Viet Nam presents its compliments to the Ministry of Foreign Affairs of the People's Republic of China and with reference to the Latter's diplomatic note No. 81(2017) dated 17 October 2017, has to reject all unfounded positions, arguments and allegations as stated in the above-mentioned diplomatic note and affirm Viet Nam's consistent position as follows:

1. Viet Nam has sufficient historical evidence and legal basis to affirm its sovereignty over the Hoang Sa (Paracel) and Truong Sa (Spratly) archipelagos. Historical facts show that Viet Nam is the first country to occupy the Hoang Sa and Truong Sa archipelagos in an effective, explicit and peaceful manner and establish her title of sovereignty over the two archipelagos since they were terra nullius. China's official historical and geographical documents also clearly indicate that by the beginning of the 20th century, China's successive dynasties had never made any sovereignty claims over the two archipelagos, and Hainan island is the southernmost territory of China. As a coastal state in the East Sea (South China Sea) and a state party to the 1982 United Nations Convention on the Law of the Sea, Viet Nam is fully entitled to the sovereignty, sovereign rights and jurisdiction in all its maritime zones as established in accordance with and under the regimes of the Convention.

Viet Nam therefore resolutely rejects China's sovereignty claim over Viet Nam's Hoang Sa and Truong Sa archipelagos and "the adjacent waters" of the two archipelagos, its claims to sovereign rights and jurisdiction over "the relevant waters as well as the sea bed and subsoil thereof", and any claims of China based on the "dotted line" that China circulated for the first time at the United Nations in May 2009. International law has already given a clear answer to China's maritime claims based on the "dotted line". Viet Nam requests China to respect and fully fulfil its international legal obligations as a state party to the 1982 United Nations Convention on the Law of the Sea.

2. China's deliberate reference to some related documents, statements and publications, including the 1958 letter by late Premier Pham Van Dong, in its argument with Viet Nam about sovereignty issues accords neither with historical facts and contexts of the 1954–1975 period nor with the principles of interpretation of international law and jurisprudence. In that historical period, Viet Nam was in a state of division. It was under the authority of the Republic of Viet Nam to conduct activities to affirm and protect Viet Nam's sovereignty over the Hoang Sa and Truong Sa archipelagos. As consistently emphasized time and again by Viet Nam, the 1958 letter of the late Premier of the Democratic Republic of Viet Nam denotes only one thing that is the support in principle for China's expansion of the breadth of its territorial sea and expresses no opinion whatsoever about the issue of sovereignty over Hoang Sa and Truong Sa archipelagos. China's interpretation goes against the statement made by Chinese leaders in September 1975 according to which China acknowledges "the existence of disputes between the two countries" over the Hoang Sa and Truong Sa archipelagos and "this issue needs to be solved by the two countries in the future" (see the attached diplomatic note No. 52/HC-2016 dated 05 February 2016 of the Permanent Mission of Viet Nam to the United Nations to the Permanent Missions of Member States to the United Nations).

3. In 1974 and 1988 respectively, China used force to occupy the entire Hoang Sa archipelago and several features of the Truong Sa archipelago of Viet Nam. The use of force by China in the East Sea in 1974 and 1988 not only seriously

infringed upon Viet Nam's sovereignty but also went against the fundamental principles of the United Nations Charter banning the use and the threat of use of force in solving disputes and differences in international relations, especially disputes over territorial sovereignty. That China's occupation by force can never bring about any lawful title of sovereignty to China. The aforesaid acts of using force by China were not only rejected by other countries but also a noted historical fact. China's unfounded accusations against Viet Nam's legitimate acts to protect its territorial sovereignty are unacceptable and cannot change this historical fact.

4. China's conduct of a series of military trainings in the area of Hoang Sa archipelago and the introduction of the "Nanhai Zhimeng Cruise Liner" not only gravely violated Viet Nam's sovereignty but also posed a threat to peace, stability, security, safety and the freedom of navigation and overflight, aggravated and further complicated the existing disputes, not conducive to the peaceful settlement of disputes between the two countries. Viet Nam sternly opposes and demands China not to repeat such activities.

5. China's documents issued on 12 and 13 July 2016 contain many contents which violate Viet Nam's sovereignty, sovereign rights and jurisdiction in the East Sea. Viet Nam's reconfirmation and circulation of its consistent position at the United Nations to protect its lawful and legitimate rights and interests in the East Sea is completely normal and reflects the right and responsibility of a sovereign state and a member of the United Nations. Viet Nam requests China to respect Viet Nam's territorial sovereignty, lawful and legitimate rights and interests in the East Sea.

6. Viet Nam once again affirms that Viet Nam will resolutely and firmly protect its territorial sovereignty over the Hoang Sa and Truong Sa archipelagos as well as all legal rights and interests of Viet Nam over its maritime zones in the East Sea by peaceful means in conformity with international law (Article 33 of the Charter of the United Nations). Viet Nam also asserts that Viet Nam will make joint efforts with China, other ASEAN member states and the international community to address at best disagreements at sea, settle related disputes in the East Sea through peaceful means, maintain peace, stability, security, safety and freedom of navigation and overflight in the East Sea, fully respect diplomatic and legal processes, uphold and observe relevant provisions of international law, especially the 1982 United Nations Convention on the Law of the Sea; strictly and fully implement the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) and the 2011 Viet Nam-China Agreement on the Basic Principles Guiding the Settlement of Maritime Issues; undertake positive and useful actions to incessantly develop and further contribute to the comprehensive strategic cooperative partnership between the two countries.

The Ministry of Foreign Affairs of the Socialist Republic of Viet Nam avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the People's Republic of China the assurances of its highest consideration.

Ha Noi, 21 December 2017

Enclosure I

Diplomatic note dated 5 February 2016 from the Permanent Mission of Viet Nam to the United Nations addressed to the Permanent Mission of China to the United Nations and copied to the Permanent Missions of other Member States to the United Nations

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations presents its compliments to the Permanent Mission of the People's Republic of China to the United Nations and, with reference to Note Verbale No. CML/1/2016 dated 8 January 2016 of the Permanent Mission of the People's Republic of China to the United Nations, has the honor to state the Vietnamese position as follows:

Viet Nam has ample historical evidence and legal basis to assert its indisputable sovereignty over Hoang Sa (Paracel) Archipelago and Truong Sa (Spratly) Archipelago, its sovereign rights and jurisdiction within its exclusive economic zone and continental shelf in the East Sea (South China Sea) as established in accordance with international law, including the 1982 United Nations Convention on the Law of the Sea.

Viet Nam rejects resolutely and completely the erroneous statement made in China's Note Verbale No. CML/1/2016 with regard to the issues of the sovereignty over Hoang Sa and Truong Sa Archipelagoes and the so-called adjacent waters. China's claim to sovereignty over these archipelagoes has absolutely no basis, be it historical or legal, and has never been recognized in any international instruments, including the 1943 Cairo Declaration and the 1945 Potsdam Proclamation. To the contrary, such a claim was rejected by an absolute majority of states participating in the 1945 San Francisco Peace Conference. China's construction of artificial islands and facilities on maritime features belonging to Viet Nam's Truong Sa Archipelago has seriously violated Viet Nam's sovereignty over this archipelago and international law, and runs counter to the Declaration on the Conduct of Parties in the South China Sea (DOC) as well as the Viet Nam-China Agreement on the basic principles guiding the settlement of maritime issues.

The historical truth is that it was only China who resorted to the use of force to illegally occupy Hoang Sa Archipelago and some features in Truong Sa Archipelago of Viet Nam, in serious violation of the international law principle of prohibition of the threat or use of force in international relations as enshrined under the United Nations Charter.

Viet Nam has neither recognized nor acquiesced in any claim of China with regard to Hoang Sa and Truong Sa Archipelagoes or any other of China's illegal claims based on the so-called "dotted line". Viet Nam once again demands that China respect the historical truth, honour the words of its High-level Leader in September 1975, which explicitly acknowledged the existence of disputes between Viet Nam and China over Hoang Sa and Truong Sa Archipelagoes (see the attached Annex), strictly comply with the Viet Nam-China Agreement on the basic principles guiding the settlement of maritime issues, settle the disputes between two countries in the East Sea by peaceful means in accordance with international law and the United Nations Charter, and make positive and practical contribution to maintaining peace and stability in the East Sea.

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations avails itself of this opportunity to renew to the Permanent Mission of the People's Republic of China to the United Nations the assurances of its highest considerations.

New York, 5 February 2016

Enclosure II

Excerpt from *Beijing Review*, No. 34 (24 August 1979), page 26

In its August 7 statement, the Vietnamese Foreign Ministry deliberately distorted what Vice-Premier Deng Xiaoping said in his talk with Le Duan, First Secretary of the Vietnamese Workers' Party, on September 24, 1975. The statement says: "Chinese Vice-Premier Deng Xiaoping admitted that there were disputes between the two parties on the Hoangsa [China's Xisha Islands] and Truongsa [China's Nansha Islands] Islands, and that the two parties would lay heads together for a settlement."

What Vice-Premier Deng told Le Duan was this: "Disputes existed between us over the Xisha and Nansha island groups. The position of each party is clear on this issue. Our position is that we have adequate evidence to prove that both Xisha and Nansha have belonged to China since ancient times. Internationally, there is information to show that at least a majority of the countries of the world recognize this fact. We may discuss this question in the future."

What Vice-Premier Deng Xiaoping emphasized is that Xisha and Nansha have been Chinese territory since ancient times and that a discussion with Viet Nam was necessary in view of the occupation of some of China's Nansha Islands by the Vietnamese authorities.